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INTERSTATE COMMERCIAL COMMISSION

Conditional Sale Agreement

Dated as of October 1, 1969

Between

GENERAL ELECTRIC COMPANY

and

MONON RAILROAD

Agreement and Assignment

Dated as of October 1, 1969

Between

GENERAL ELECTRIC COMPANY

and

**CONTINENTAL ILLINOIS NATIONAL BANK AND
TRUST COMPANY,**

Trustee

CONDITIONAL SALE AGREEMENT dated as of October 1, 1969, by and between the corporation named in Item 1 of Schedule A hereto (hereinafter called the Manufacturer or Builder, as more particularly set forth in Article 28 hereof), and MONON RAILROAD, an Indiana corporation with its principal place of business at 332 South Michigan Avenue, Chicago, Illinois 60604 (hereinafter called the Railroad).

WHEREAS, the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B attached hereto (hereinafter called the Equipment); and

WHEREAS, the Manufacturer and the Railroad have agreed that this Agreement shall exclusively and completely state the rights of the Manufacturer and the Railroad with respect to the Equipment and shall supersede all other agreements, oral or written, with respect to the Equipment;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. **CONSTRUCTION AND SALE.** The Builder will construct, sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for as hereinafter provided, the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such minor modifications thereof as may be agreed upon in writing between the Railroad and the Builder (which specifications and modifications, if any, are hereinafter called the Specifications). The design and quality of equipment and material in each unit of Equipment shall

conform to all Department of Transportation requirements and specifications, and all standards of the Association of American Railroads interpreted as being applicable to railroad equipment of the character of such units as of the date of this Agreement (hereinafter called the Equipment and each unit of which is hereinafter called a unit).

2. DELIVERY. The Builder will deliver the Equipment to the Railroad at such point or points as shall be specified by the Railroad, freight charges in accordance with the delivery schedule set forth in Schedule B hereto.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of Government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage in plant, equipment or facilities or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not settled for hereunder on or before July 1, 1970, shall be excluded herefrom.

If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding paragraph, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded from this Agreement on or before July 1, 1970, resulted from one or more of the causes set forth in the second paragraph of this Article 2, the Railroad shall nevertheless be obligated to accept all such Equipment and pay the full purchase price therefor, determined as provided herein, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on

the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine.

The Equipment during construction shall be subject to inspection by an inspector or other authorized representative of the Railroad. Prior to or at the final delivery of each unit of the Equipment by the Builder, the inspector or other authorized representative of the Railroad shall inspect such unit to ascertain if such unit conforms to the Specifications. On delivery of each unit of Equipment the representative of the Railroad shall furnish to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that each unit of the Equipment described in such Certificate has been delivered to and fully and finally accepted on the Railroad's behalf by such representative at the place therein specified, that each such unit is marked in accordance with Article 7 hereof and that each such unit has been inspected and found to be completed in accordance with this Agreement and the Specifications. Such Certificate of Acceptance shall be final and conclusive evidence that such unit conforms in workmanship, material and construction and all other respects to the requirements and provisions of this Agreement, without prejudice to the rights of the Railroad under the Builder's warranty of materials and workmanship hereinafter set forth in Article 10 hereof.

On delivery of each such unit hereunder at the point specified by the Railroad, the Railroad will assume with respect thereto the responsibility and risk of loss.

3. PURCHASE PRICE AND PAYMENT. The base price per unit of the Equipment, exclusive of interest, is set forth in Schedule B hereto. The base price may include prepaid

freight charges, and is subject to such increase or decrease as set forth in Article 4 hereof, as may be agreed to by the Builder and the Railroad for each such unit of the Equipment. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased.

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 2 of Schedule A hereto (the Equipment settled for on each Closing Date being hereinafter called a Group); *provided, however*, that if there shall at any time have been delivered to and accepted by the Railroad units of Equipment, and the Builder shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 30 days or more following the last date of delivery with respect to such delivered and accepted unit or units, such delivered and accepted units shall constitute an additional Group for the purpose of settlement.

The Railroad hereby acknowledges itself to be indebted to the Manufacturer in the amount of, and hereby promises to pay in cash to the Manufacturer at the office of the Manufacturer, or at such other place as the Manufacturer may designate, the Purchase Price of the Equipment as follows:

(a) On each Closing Date (as hereinafter defined) with respect to each Group, the amount, if any, by which the estimated aggregate Purchase Price of all the units of Equipment for which settlement has theretofore and is then being made (hereinafter called the Group Invoiced Purchase Price) exceeds the amount set forth in Item 3 of Schedule A hereto (hereinafter called the Committed Amount); and

(b) Upon receipt of a final certificate of aggregate Purchase Price (hereinafter called the Final Certificate) for all Groups, the amount, if any, by which the

final aggregate Purchase Price of all the units of the Equipment, as stated in the Final Certificate (hereinafter called the Final Invoiced Purchase Price) shall exceed the aggregate of the Group Invoiced Purchase Prices; and

(c) An amount equal to the Group Invoiced Purchase Price of each Group less the amounts paid or payable in respect thereof pursuant to subparagraph (a) of this paragraph payable in seven consecutive annual instalments, the first two instalments each to be equal to $2/39$ ths of such amount, and the last five instalments each to be equal to $7/39$ ths of such amount.

If this Conditional Sale Agreement shall have been assigned by the Builder, the obligations of the Railroad under subparagraph (b) of the preceding paragraph of this Article 3 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof in respect of such obligation.

The first instalment of the portion of the indebtedness in respect of the Purchase Price of all the Equipment payable pursuant to subparagraph (c) of the third paragraph of this Article 3 shall be payable on July 1, 1970, and subsequent instalments shall be payable annually thereafter on July 1 of each year to and including July 1, 1976. The unpaid portion of such indebtedness shall bear interest from the respective Closing Dates at the rate of $4\frac{3}{4}\%$ per annum, except that interest in respect of the indebtedness payable on each of the last five instalment dates shall accrue at the rate of $4\frac{3}{4}\%$ per annum on $20/39$ ths thereof and at rate of 5% per annum on $15/39$ ths thereof.

The Final Certificate shall be delivered on or before July 1, 1970, and, if not so delivered, the Final Invoiced Purchase Price shall be, for all purposes of this Agreement,

the aggregate Group Invoiced Purchase Prices. The Builder agrees that the Group Invoiced Purchase Prices shall be so fixed that they will not exceed the Final Invoiced Purchase Price.

The term "Closing Date" with respect to any Group shall mean such date, not more than ten business days following presentation by the Builder to the Railroad of the invoice for such Group and the Certificates of Acceptance in respect thereof, as shall be fixed by the Railroad by written notice delivered to the Manufacturer at least seven business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 6% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made by the Railroad in such coin or currency of the United States of America as at the time of payment shall be legal tender for payment of public and private debts.

4. CHANGES IN PRICES. The base price of each unit of the Equipment is subject to increase or decrease as shall be mutually agreed on by the Builder and the Railroad.

5. TAXES. All payments to be made by the Railroad hereunder will be free of expense to the Manufacturer for collection or other charges and will be free of expenses to the Manufacturer in respect of the amount of any local, State or Federal taxes (other than net income, excess profits and similar taxes) or licenses hereafter levied or

imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Manufacturer solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer to, or result in a lien upon, any unit of the Equipment; *provided, however,* that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Manufacturer directly and paid by the Manufacturer, the Railroad shall reimburse the Manufacturer on presentation of invoice therefor; *provided, however,* that the Railroad shall not be obligated to reimburse the Manufacturer for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Manufacturer shall have been legally liable in respect thereof, or unless the Railroad shall have approved the payment thereof.

6. TITLE TO THE EQUIPMENT. The Manufacturer shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all of

the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Manufacturer shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturer, except that the Manufacturer, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 24 hereof, and will execute in the same manner and deliver at the same place, for recording or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate or payment in compliance with any law or statute requiring the filing of the same, except for

failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

7. MARKING OF EQUIPMENT. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set out in Schedule B hereto and will cause each side of such unit to be kept plainly, distinctly, permanently and conspicuously marked by a metal plate or otherwise, in letters not less than one inch in height, with the name of the Manufacturer followed by the words "Owner" or other appropriate words designated by the Manufacturer, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Manufacturer to the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over any part thereof until such unit shall have been marked as aforesaid, and will replace promptly any such marking which may be removed, defaced or destroyed. The Railroad will not change the numbers of any such units except in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Manufacturer by the Railroad and shall promptly be filed and recorded by the Railroad with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Railroad may cause the Equipment to be lettered with the name or initials of the Railroad or in some other

appropriate manner for convenience of identification of the interest of the Railroad therein.

8. LOST, DESTROYED OR DAMAGED EQUIPMENT. In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price, together with interest thereon and all other payments required hereby, the Railroad shall, within ten days after it shall have been determined that such unit has suffered a Casualty Occurrence, fully inform the Manufacturer in regard thereto and, within 30 days after such determination, shall pay to the Manufacturer a sum equal to the then value of such unit determined as hereinafter provided (any payment already received by the Manufacturer as insurance or as compensation for such damage or loss from another railway carrier or other person to be first credited toward the payment of such amount).

For all purposes of this Article 8 the value of any unit suffering a Casualty Occurrence shall be the Purchase Price of such unit less depreciation calculated at 6% per annum for each period of twelve calendar months elapsed since the date of delivery and acceptance of such unit to the date of the Casualty Occurrence in respect thereof.

Any money paid to or received by the Manufacturer pursuant to this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have happened and be continuing, be applied, in whole or in part, if the Railroad shall so direct in a written instrument filed with the Manufacturer, to or toward the cost of a unit or units of new standard gauge railroad equipment (other than work, piggy-back or passenger equipment) to replace any unit having suffered a Casualty Occurrence.

The Railroad will cause any replacing unit to be plated or marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Manufacturer to such replacements.

If the Manufacturer of such replacements be other than the Builder, such Manufacturer shall, be execution of an appropriate instrument satisfactory to the Manufacturer, agree to be bound by all the terms and provisions of this Agreement with respect to such replacements.

Whenever the Railroad shall file with the Manufacturer, pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacing unit of new standard gauge railroad equipment, the Railroad shall file therewith executed counterparts of

(1) a certificate of a Vice-President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacing unit is new standard gauge railroad equipment (other than work, piggy-back or passenger equipment) and has been plated or marked as required by the provisions of this Article 8 and certifying the cost of such replacing unit; and

(2) an opinion of counsel for the Railroad that title to such replacing unit is vested in the Manufacturer free

and clear of all liens and encumbrances, and that such unit has come under and become subject to this Agreement.

So long as none of the events of default specified in Article 18 hereof shall have happened and be continuing, any money paid to the Manufacturer pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such direct obligations of the United States of America (hereinafter called Government Securities) as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Government Securities as the Railroad may in writing direct. Any Government Securities shall be sold by the Manufacturer at or about the time required for the application of the proceeds thereof as is otherwise required by the provisions of this Article 8. Any interest received by the Manufacturer on any Government Securities shall be held by the Manufacturer and applied as herein provided. Upon any sale or payment at maturity of any Government Securities, the proceeds thereof, plus any interest received by the Manufacturer thereon, up to the cost (including accrued interest) thereof, shall be held by the Manufacturer for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds plus such interest shall be less than such cost, the Railroad will promptly pay to the Manufacturer an amount equal to such deficiency; but, unless an event of default specified in Article 18 hereof shall have occurred and be continuing, if the amounts received thereon including interest received upon or prior to such disposition shall exceed such cost, the excess shall be paid to the Railroad upon its written request. The Railroad will pay all expenses incurred by the Manufacturer in connection with the purchase and sale of Government Securities

other than accrued interest and premium paid upon any such purchase.

If one of the events of default specified in Article 18 hereof shall have happened and be continuing, then so long as such event of default shall continue all money then held by the Manufacturer pursuant to this Article 8 (including for this purpose Government Securities and interest thereon) shall be applied by the Manufacturer as if such money were money received upon the sale of Equipment pursuant to Article 19 hereof.

9. MAINTENANCE AND REPAIR. The Railroad will at all times maintain the Equipment in good order and repair at its own expense.

10. BUILDER'S WARRANTY OF MATERIAL AND WORKMANSHIP. The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 1 hereof and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use and service; the Builder's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with the transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its au-

thorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 1, 2, 3 and 16 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, this Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, this Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim except as provided in Article 16 of this Agreement, and upon the expiration of the warranty period specified above, except as so provided, all such liability shall terminate. The Builder shall have no liability for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of and to add improvements to the

Equipment at any time without incurring any obligations to install, at the Builder's expense, the same on other locomotives sold by the Builder.

Notwithstanding anything to the contrary contained in this Agreement it is understood and agreed there will be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Builder and which will be the equivalent of new components.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 2 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 2 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Article 10.

11. COMPLIANCE WITH LAWS AND RULES. During the term of this Agreement the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads (to the extent applicable) and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment, and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

12. REPORTS AND INSPECTIONS. On or before March 31 in each year, commencing with the year 1970, the Railroad will furnish to the Manufacturer an accurate statement signed by an authorized officer (a) showing, as at the preceding December 31, the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or from the date of this Agreement in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Manufacturer may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the preceding calendar year, the plates or marking required by Article 7 hereof have been preserved or replaced. The Manufacturer shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year during the term of this Agreement.

13. POSSESSION AND USE. The Railroad from and after delivery of the Equipment by the Builder hereunder and so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which the Railroad has trackage rights, and the Equipment, except to the extent that it includes locomotives, may be used also upon connecting and other railroads in the usual interchange of traffic, and may be leased to other responsible railroads or responsible industries, but only upon and subject to all the terms and conditions of this Agreement.

14. PROHIBITION AGAINST LIENS. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Manufacturer thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer in or to the Equipment or otherwise hereunder.

15. RAILROAD'S INDEMNITIES. The Railroad agrees to indemnify and hold harmless the Manufacturer from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Manufacturer of title to the Equipment, or out of the use and operation thereof by the Railroad during the period when title thereto remains in the Manufacturer. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 6 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment; *provided, however*, that the Builder shall not be relieved from its warranty covering material and workmanship hereinbefore in Article 10 set forth.

16. PATENT INDEMNITIES. The Builder agrees that, in case the use of any unit of the Equipment or any part thereof is enjoined by a patent infringement suit or claim against the Builder, any assignee of the Builder or the Railroad (other than a suit or claim arising in any way out of an alleged infringement by reason of the use of or incorporation in the Equipment of any device and/or specialty designated by the Railroad to be used by the Builder in the building of the Equipment and which was not manufactured by the Builder), the Builder will promptly, at its own expense and at its option: (i) procure for the Railroad the right to continue using such unit of the Equipment, or part thereof; or (ii) replace the same with a noninfringing unit, or part thereof of the same quality and performance as the unit or part so replaced; or (iii) modify such unit of the Equipment, or part thereof, so that it becomes noninfringing and so that such unit or part thereof shall be of the same quality and performance as the unit or part so modified; *provided, however*, that the exercise of any of the foregoing options by the Builder shall not in any way be construed as a waiver of a limitation on the rights of the Railroad under this Article 16. Except in cases of articles and materials specified by the Railroad and not manufactured by the Builder and in cases of designs specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns, or the users of the Equipment because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any article or material infringing or claimed to infringe on any patent or other similar right. The Railroad will indemnify, protect and hold

harmless the Manufacturer from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any article or material specified by the Railroad and not manufactured by the Builder or of any design specified by the Railroad and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other similar right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, articles or materials specified by the Railroad and purchased or otherwise acquired by the Builder for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other similar right. The Builder further agrees to execute and deliver to the Railroad or the users of the Equipment, all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder. Said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

17. ASSIGNMENTS. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 13 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Manufacturer. An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Manufacturer, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturer and re-assigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained in Articles 10 and 16 hereof, or relieve the Railroad of its obligations to the Builder under Articles 15 and 16 hereof and this Article 17 or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Manufacturer's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the

Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect of the Equipment or the construction, delivery or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment, or successive assignments by the Manufacturer, of title to the Equipment and of the Manufacturer's rights hereunder in respect thereof, the Railroad will, whenever requested by such assignee, change the markings to be placed on each side of each unit of the Equipment so as to indicate the title of such

assignee to the Equipment, such markings to be such as shall be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date, all documents required by the terms of such assignment to be delivered to the assignee in connection with such settlement, except for any opinion of counsel for the assignee, in such number of counterparts as may reasonably be requested.

If this Agreement shall have been assigned by the Builder, and the assignee shall not make payment to the Builder on the Closing Date with respect to a Group of Equipment of an amount equal to that portion of the Purchase Price of such Group to be paid pursuant to subparagraph (c) of the third paragraph of Article 3 hereof, as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event, and if such amount shall not have been previously paid by the assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder such amount, together with interest from such Closing Date to the date of payment by the Railroad at the prime rate of interest of leading Chicago banks in effect on the date such payment was due.

18. DEFAULT. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equip-

ment or any other sum payable by the Railroad as herein provided within 30 days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Manufacturer shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Manufacturer for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall within 30 days from the filing thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions, and, unless such proceedings shall within 30 days from the filing or effective

date thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 6% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Manufacturer may at its election waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

19. REMEDIES. At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement

and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Manufacturer, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines as shall be designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Manufacturer shall have leased, sold or otherwise disposed of the same; and for such purpose the Railroad agrees to furnish without charge for rent or storage the necessary facilities at any point or points selected by the Manufacturer reasonably convenient to the Railroad. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election retain the Equipment as its own and make such disposition thereof as the Manufacturer shall deem fit, and in such event all the Railroad's rights in the Equipment will thereupon ter-

minate and all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Equipment by the Railroad; *provided, however*, that, if the Railroad, within 20 days of receipt of notice of the Manufacturer's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the Purchase Price of all the Equipment, together with interest thereon accrued and unpaid and all the other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; or the Manufacturer, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Railroad, or any other party claiming by, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Manufacturer under the provisions of this Agreement. Written notice of the Manufacturer's election to retain the Equipment for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof, at any time during a period of 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinabove provided; and if no such notice shall have been given, the Manufacturer shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Manufacturer

may fix (unless the Manufacturer shall specify a different place or places, in which case the sale shall be held at such place or places and at such time or times as the Manufacturer may specify), in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and, in general in such manner as the Manufacturer may determine, provided that the Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Manufacturer or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Manufacturer shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the purchase price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the rights to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal

or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Manufacturer upon demand, and, if the Railroad shall fail to pay such deficiency, the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 19 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

20. APPLICABLE STATE LAWS. Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Railroad to the fullest extent permitted by

law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturer's rights hereunder and any and all rights of redemption.

21. EXTENSION NOT A WAIVER. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Manufacturer's rights or the Railroad's obligations hereunder. The Manufacturer's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Manufacturer's rights hereunder with respect to any subsequent payments or default therein.

22. RECORDING. The Railroad will cause this Agreement, any assignments hereof and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer, of its title to the Equipment and its rights under this Agreement or

for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Manufacturer certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Manufacturer.

23. PAYMENT OF EXPENSES. The Railroad will pay all reasonable costs and expenses, except the counsel fees of the Builder, but including the fees and expenses of counsel for the first assignee of this Agreement and of counsel for any other parties acquiring interests in the first assignment by the Manufacturer of this Agreement, and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement, of such first assignment, of any instrument supplemental to or amendatory of this Agreement or such first assignment, and of any certificate of the payment in full of the indebtedness in respect of Purchase Price of the Equipment due hereunder. In addition, the Railroad will pay all reasonable costs and expenses, including fees and expenses of counsel and including stamp and other taxes, if any, of the first assignee of this Agreement (including the fees of an agent or trustee, if the first assignee is an agent or trustee) and of any party or parties acquiring interests in such first assignment, incurred in connection with such first assignment and payments to the Builder by such first assignee, and in connection with the transfer by any party or parties of interests acquired in such first assignment.

24. NOTICE. Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at 332 South Michigan Avenue, Chicago, Illinois 60604, or at such other address as may have been fur-

nished in writing to the Manufacturer by the Railroad. Any notice hereunder to the Builder shall be deemed to be properly served if delivered or mailed to the Builder at the address specified in Item 4 of Schedule A hereto or at such other address as may have been furnished in writing to the Railroad by the Builder. Any notice hereunder to any assignee of the Manufacturer or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroad or the Manufacturer, as the case may be, by such assignee.

25. ARTICLE HEADINGS. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

26. EFFECT AND MODIFICATION OF AGREEMENT. This Agreement including Schedules A and B hereto exclusively and completely states the rights of the Manufacturer and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Manufacturer and the Railroad.

27. LAW GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The Railroad warrants that its chief place of business is in Illinois.

28. DEFINITIONS. The term "Manufacturer", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, General Electric Com-

pany, and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, General Electric Company, and any successor or successors for the time being to its manufacturing properties and business.

29. EXECUTION. This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of October 1, 1969, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their respective officials thereunto duly au-

thorized, and their respective corporate seals to be hereunto
affixed and duly attested, all as of the day, month and year
first above written.

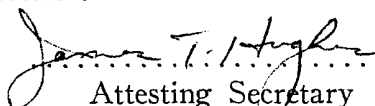
GENERAL ELECTRIC COMPANY

By 

OLAF F. VEA,
General Manager,
Locomotive Department

[CORPORATE SEAL]

Attest:


Attesting Secretary

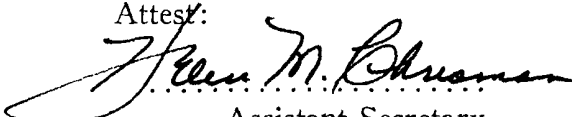
MONON RAILROAD

By 

Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA } ss.:
COUNTY OF ERIE

On this ^{23rd} day of *December*, 1969, before me personally appeared *Olaf J. Pea*, to me personally known, who, being by me duly sworn, says that he is General Manager, Locomotive Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara A. Frombach
Notary Public

[NOTARIAL SEAL]

My Commission Expires

STATE OF ILLINOIS } ss.:
COUNTY OF COOK

On this ~~29th~~ day of *December*, 1969, before me personally appeared *W. J. Hentzel*, to me personally known, who, being by me duly sworn, says that he is a Vice President of MONON RAILROAD, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. Volner
Notary Public

[NOTARIAL SEAL]

My Commission Expires *September 5, 1971*

SCHEDULE A—GENERAL ELECTRIC

ITEM 1: General Electric Company, a New York corporation.

ITEM 2: For purposes of making settlement, the Equipment shall be considered as one group delivered to and accepted by the Railroad unless Railroad and Builder otherwise agree.

ITEM 3: The Committed Amount: \$350,645.

ITEM 4: 2901 East Lake Road, Erie, Pennsylvania 16511.

ADDITIONAL AGREEMENTS

The Railroad will at all times after delivery and acceptance of each unit of the Equipment pursuant to the Conditional Sale Agreement and prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, keep each such unit insured (with loss payable to the Manufacturer and the Railroad as their interests may appear) with an insurance company or companies satisfactory to the Manufacturer against loss, damage or destruction by fire, lightning, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion, in an amount at least equal to the value of such unit determined as provided in Article 8 of the Conditional Sale Agreement; *provided, however*, that the contracts for such insurance may provide for loss deductible in an amount not exceeding \$50,000 of the insured value of each unit. Any proceeds of insurance received by the Manufacturer in respect of a Casualty Occurrence shall be credited toward the payment required by Article 8 of the Conditional Sale Agreement in respect of such Casualty Occurrence, and shall be held and disposed of by the Manufacturer in accordance with said Article 8.

SCHEDULE B

Type	Specifications	Quantity	Railroad's Road Numbers	Unit Base* Price	Total Base* Price	Estimated Delivery
2250 H. P. U-23-B Diesel Locomotives	No. 3530 dated Sept. 1967	2	607 and 608	\$204,013	\$408,026	November, 1969 at Louisville, Kentucky

*F.O.B. Erie, Pennsylvania with freight allowed not to exceed the normal freight from Erie to destination, less normal freight from Chicago, Illinois to destination.

AGREEMENT AND ASSIGNMENT, dated as of October 1, 1969, between the corporation first named below the testimonium hereof (hereinafter called the Builder) and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association organized and existing under the laws of the United States of America, as Trustee under a Trust Agreement dated as of July 1, 1961, as amended and supplemented by a Supplemental Trust Agreement dated as of January 1, 1966 (hereinafter called the Trust Agreement) (said Trustee, so acting, being hereinafter called the Assignee).

WHEREAS, the Builder and Monon Railroad, an Indiana corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of October 1, 1969 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH that, in consideration of the sum of One Dollar (\$1) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns,

(a) all the right, title and interest of the Builder in and to the Equipment and each unit thereof when and

as severally delivered and accepted and upon payment by the Assignee to the Builder of the amounts required to be paid under Section 6 hereof in respect thereof,

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and the right to receive the payments specified in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof and in the last paragraph of Article 17 thereof and reimbursement for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of its indebtedness in respect of the Purchase Price of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded, and

(c) all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or in respect of its obligations contained in Articles 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder under Articles 2, 15 and 16 of the Conditional Sale Agree-

ment, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignments pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

2. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions in the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and

the Builder further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordings referred to in Article 22 of the Conditional Sale Agreement have been effected.

3. The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation in respect of the Equipment or the manufacture, construction, delivery, or warranty thereof, or under Articles 10 and 16 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments or trans-

fers. The Builder will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right, except for any designs, articles or materials specified by the Railroad and not manufactured by the Builder. The Builder agrees that any amounts payable to it by the Railroad in respect of the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on the Equipment or any unit thereof.

The Assignee will give notice to the Builder of any suit, proceeding or action by the Assignee described in the preceding paragraph, and shall promptly move or take other appropriate action on the basis of Article 17 of the Conditional Sale Agreement to strike any defense, set-off, counterclaim or recoupment asserted by the Railroad therein, and if the court or other body having jurisdiction in such suit, proceeding or action denies such motion of the other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee shall promptly notify the Builder of any such defense, set-off, counterclaim or recoupment asserted by the Railroad and the Builder thereafter shall be given the right by the Assignee, at the Builder's expense, to compromise, settle or defend against, such defense, set-off, counterclaim or recoupment.

4. The Builder will cause to be plainly, distinctly, permanently and conspicuously marked, by metal plate or

otherwise, on each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, the following legend in letters not less than one inch in height:

"CONTINENTAL ILLINOIS NATIONAL BANK AND
TRUST COMPANY OF CHICAGO,
TRUSTEE, OWNER."

5. Upon request of the Assignee, its successors and assigns, the Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

6. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group of Equipment (as defined in said Article 3), shall pay to the Builder an amount equal to that portion of the Purchase Price (as defined in said Article 3) of such Group payable by the Railroad pursuant to subparagraph (c) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Builder to the Assignee, transferring to the Assignee title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units

was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) Certificates of Acceptance with respect to the units of the Equipment in such Group contemplated by Article 2 of the Conditional Sale Agreement;

(c) Duplicate invoice for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units as set forth in said invoice;

(d) Opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, stating that (i) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the respective parties thereto and are valid and binding instruments enforceable in accordance with their terms, (ii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America, (iii) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment, (iv) title to the units of the Equipment in such Group is validly vested in the Assignee, and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement and

(v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment or, if any authority is necessary, it has been obtained;

(e) Opinion of counsel for the Builder covering the matters referred to in items (iii) and (iv) of paragraph (d) of this Section 6 and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its state of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Builder and are valid instruments binding upon the Builder and enforceable against the Builder in accordance with their terms;

(f) Opinion of counsel for the Railroad covering the matters referred to in items (ii), (iv) and (v) of paragraph (d) of this Section 6 and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of Indiana, its state of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and is a valid and binding instrument enforceable against the Railroad in accordance with its terms;

(g) Unless payment of the amounts payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Railroad, a counterpart of the receipt from the Builder for such payment.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may in fact rely, as to any matter governed by the law of any jurisdiction other than the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof.

7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered for a valid consideration, that it is a valid and existing agreement binding upon the Builder and the

Railroad in accordance with its terms, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.


9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

10. This Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated as of October 1, 1969, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

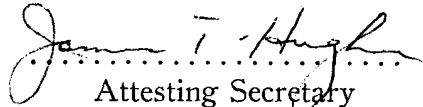
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names by their respective officials, thereunto duly authorized, and their respective seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL ELECTRIC COMPANY

[CORPORATE SEAL]

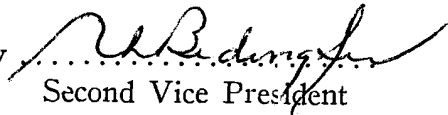
By 
Olaf F. Veal
General Manager,
Locomotive Department

Attest:


Attesting Secretary

CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY OF
CHICAGO, as Trustee

[CORPORATE SEAL]

By 
Second Vice President

Attest:

..... 
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF ERIE } ss.:

On this 23rd day of December, 1969, before me personally appeared Alfred H. Lee, to me personally known, who, being by me duly sworn, says that he is General Manager, LOCOMOTIVE DEPARTMENT OF GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Richard A. Frankfort
Notary Public

My Commission Expires

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 30th day of Dec, 1969, before me personally appeared V. L. BEDINGFIELD, to me personally known, who, being by me duly sworn, says that he is a Second Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. W. Austin

J. W. Austin
Notary Public

My Commission Expires November 2, 1970.

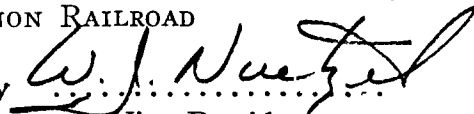
[NOTARIAL SEAL]

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Monon Railroad hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment as of October 1, 1969.

MONON RAILROAD

By


.....

Vice President